DEPARTMENT OF INSURANCE
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BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of SHERRIE'S SCHOOLS, Appellant, From a Decision of THE WORKERS' COMPENSATION INSURANCE RATING BUREAU OF CALIFORNIA, Respondent.	FILE NO. ALB-WCA-95-4

PROPOSED DECISION

This matter was heard before Administrative Law Judge Janice E. Kerr in San Francisco, on September 20, 1995.

Appellant, Sherrie's Schools (Sherrie's), was represented by Jules Siegel, 25338 Bani Avenue, Lomita, California 90717.

Respondent, Workers' Compensation Insurance Rating Bureau (Bureau), was represented by John N. Frye, Esquire, of the law firm of Frye & Alberts, 1901 Avenue of the Stars, Suite 390, Los Angeles, California 90067-6001, Warren J. Clark, Vice President of the Bureau and Peter E. Murray, Senior Vice President, Spear

Street Tower, Suite 50, One Market Plaza, San Francisco, California 94105.

The basic facts in this matter are not in dispute. Sherrie's disagrees with the valuation of a claim by its previous insurer, Aetna Casualty & Surety Company (Aetna). Sherrie's does not believe that Aetna diligently protected Sherrie's interests in the handling of a claim by an employee of Sherrie's. According to Sherrie's, the claim was noncompensable. Nevertheless, when Aetna reported the claim to the Bureau Sherrie's experience modification was adjusted to reflect the claim. Sherrie's believes that if the claim had been handled appropriately by Aetna its experience modification would not have been adjusted. Therefore, Sherrie's argues that the claim should be eliminated from the experience modification calculation.

Sherrie's disputed the use of the claim with Aetna in July 1993 and Aetna forwarded the complaint on to the Bureau. The Bureau responded that more information was needed. Apparently, Aetna responded directly to Sherrie's rather than the Bureau. In January 1994, State Fund requested that the appeal be placed on the classification and Rating Committee (C & R) agenda.[1]

Meanwhile, on June 22, 1994 Sherrie's filed a small claims action against Aetna and the Bureau seeking $5,000 in damages resulting from the improper reporting of the claim and incorrect

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[1]Aetna had also made some "payment allocation errors" and submitted a revised report to the Bureau resulting in a revision of the experience modification. This correction is not a issue here.

experience rating. The Judge indicated orally at the August 23, 1994 proceeding that the Court had no jurisdiction over the Bureau and ordered Aetna to pay Sherrie's $3,120 plus $119 in costs.

The C & R hearing was ultimately held on August 13, 1994. At the hearing, Sherrie's laid out its case and also confirmed that the $3,120 awarded by the Small Claims Court "represented the adverse effect that the inclusion of the subject claim has had, and will have, on the calculations of the 1993, 1994 and 1995 experience modifications. Thus, Sherrie's was "made whole." (Docs 00014) The C & R voted unanimously to sustain the Bureau's position that the claim at issue must be used in the experience modification calculation.

Sherrie's now appeals to the Insurance Commissioner pursuant to California Insurance Code sec. 11753.1 which provides that a person aggrieved by a decision, action or omission to act of a rating organization may file a written complaint and request a hearing with the Insurance Commissioner.

Sherrie's Position

The noncompensable claim, which was not diligently handled by Sherrie's' carrier, Aetna, should not be used in the calculation of Sherrie's experience modification.

Bureau Position

The C & R has no authority to revise the valuation of a claim or to determine whether a claim is compensable for experience modification purposes.

Discussion

Prior to the hearing Sherrie's had sought to discover the facts surrounding the handling of its employee's claim, but said discovery was denied on the grounds that the Bureau has no authority by regulation or statute to resolve complaints about the handling of individual claims. At the hearing, Sherrie's reiterated its basic contention that Aetna acted in bad faith on a fraudulent claim and that the Bureau denied Sherrie's due process by reflecting the bad faith claim in Sherrie's experience modification.

As noted in the Bureau's letter brief Section IV of the "California Experience Rating Plan" provides how the Bureau should calculate an employer's experience rating. The data to be used is the individual risk experience data reported by the carrier and the data shall be tabulated and exhibited. Further, "no loss shall be excluded" ... on the ground the employer was not morally responsible for the accident...." And, finally, values shall not be revised for an error in judgment (Plan, General Rules, Section IV, Rules 1, 2, 4, 6 and 7). Thus, the Bureau merely receives information and makes calculations. It does not pass judgment on the actions taken.

We agree with the Bureau that this appeal is not the proper proceeding to consider an employer policyholder's complaint that an employees claim has been inappropriately handled. Further, because the Bureau's charge does not extend to evaluating the merits of claims, it also has no authority to override the

insurer's information on same in calculating a policyholder's experience modification.[2]

Sherrie's further suggests that, because the Bureau's members are insurance companies, policyholder employers cannot receive fair treatment from the Bureau. While Sherrie's concerns are understandable, given the makeup of the Bureau, we find nothing on this record to suggest that the Bureau has been unfair in addressing Sherrie's concerns. The treatment of Sherrie's' complaint was consistent with Bureau rules and historical practice.

The final issue at this hearing was raised by the Bureau. Peter Murray, who appeared as a management representative for the Bureau, noted that, in preparing for the hearing, it appeared to him that the claim at issue might be a post-termination claim which falls within the parameters of Ruling No. 282. A Bureau staff member had pursued the issue earlier with Aetna but was advised the claim was not post-termination. Mr. Murray stated he would follow up with Aetna and inform the Court. By letter dated November 15, 1995, Mr. Murray advised that after pursuing the matter one more time with Aetna, the carrier agreed that, indeed, the claim at issue is a post-termination claim which meets the parameters of Ruling No. 282. Therefore, Sherrie's experience modification has been reduced from 101% to 97% and Sherrie's and

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[2]The fact that Sherrie's was "made whole" in its small claims action against Aetna indicates that Sherrie's is not without relief.

State Fund were notified accordingly. We commend the Bureau for following through on this issue.

ORDER

Therefore, IT IS ORDERED, that it is not within the Bureau's authority to review the good faith handling of claims by insurers. The August 13, 1994 decision regarding Sherrie's is sustained. This decision and order is effective in 20 days.

DATED: December 6, 1995

JANICE E. KERR
Administrative Law Judge